

### **REMARKS**

In the Non-Final Office Action dated February 06, 2007, claims 1-31 and 36-43 are pending, claims 1-3, 5, 7, 14-24, 26-31, and 36-42 stand rejected, and claims 4, 6, 8-13, 25, and 43 are objected to. In particular, claim 41 is rejected under 35 U.S.C. §102(e) over U.S. 6,715,071 to Ono et al. ("*Ono*"), and claims 1-3, 5, 7, 14, 18-24, 26, 30-31, 36-40, and 42 are rejected under 35 U.S.C. §103(a) over U.S. 6,532,220 to Carneal et al. ("*Carneal*") in view of Ono.

Applicant appreciates the time provided by Examiner Tran during the telephonic interview conducted with the undersigned on May 4, 2007. During the interview, the undersigned discussed with the Examiner the Declaration under 37 CFR 1.131 filed by Applicant on April 20, 2006 which was considered by the Examiner to be ineffective because Exhibit C of the Declaration shows a program without the date of simulation of the program. Examiner Tran clarified that his concern was merely that the exhibit did not mention a specific date on which the code was executed. The undersigned pointed out that, as indicated in MPEP 715.07 Section II:

When alleging that conception or a reduction to practice occurred prior to the effective date of the reference, the dates in the oath or declaration may be the actual dates *or, if the applicant or patent owner does not desire to disclose his or her actual dates, he or she may merely allege that the acts referred to occurred prior to a specified date.*

(emphasis added) The undersigned pointed out that Section 7 of the Declaration under 37 CFR 1.131 clearly stated that "the code portions of Exhibit C" were "executed before June 25, 1999," the filing date of Ono. Thus, the declaration is in compliance with the MPEP guidelines set forth above. Therefore Applicant requests reconsideration of the Declaration under 37 CFR 1.131.

Applicant thus submits that Ono is not available as a prior art reference under §102(e) or §103 against the pending claims. As all of the §102 and §103 references rely at least in part on Ono, Applicant requests reconsideration and withdrawal of the §102 and §103 rejections of the pending claims.

Application No.: 09/536191  
Response dated May 07, 2007  
Reply to Office Action of February 06, 2007

Docket No.: BBNT-P01-320

In view of the above remark, Applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response other than as reflected on the enclosed Fee Transmittal. However, if a fee is due, please charge our Deposit Account No. 18-1945, under Order No. BBNT-P01-320 from which the undersigned is authorized to draw.

Dated: May 07, 2007

Respectfully submitted,

By 

Edward A. Gordon

Registration No.: 54,130

ROPES & GRAY LLP

One International Place

Boston, Massachusetts 02110-2624

(617) 951-7000

(617) 951-7050 (Fax)

Attorneys/Agents For Applicant